

DEPARTMENT OF STATE REVENUE

LETTER OF FINDINGS NUMBER: 02-0270P

Sales and Use Tax

Calendar Years 1997, 1998, 1999, and 2000

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ISSUE(S)

I. Tax Administration – Penalty

Authority: IC 6-8.1-10-2.1(d); 45 IAC 15-11-2

Taxpayer protests the penalty assessed.

STATEMENT OF FACTS

Taxpayer provides a wide array of digital wireless communications services throughout the United States and has a sales office in Indiana where they have property, employees, and inventory. At audit, it was determined that the taxpayer failed to charge sales tax to several customers for whom no exemption certificates could be obtained. Taxpayer purchased fixed assets for use in Indiana. Upon the auditor's review of the taxpayer's fixed assets listings and the supporting invoices and other relevant documents, it was determined that no sales tax was billed or paid at point of purchase and no use tax was self assessed nor paid.

I. Tax Administration – Penalty

DISCUSSION

Taxpayer protests the penalty assessed and states that the bulk of the assessment resulted from exemptions that were improperly granted to its customers and it has corrected these errors and taken steps to ensure that they will not recur in the future. In addition, taxpayer states that it is implementing an automated use tax accrual system that will improve its compliance with respect to use tax accruals on fixed assets and expense purchases.

45 IAC 15-11-2(b) states, "Negligence, on behalf of the taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or

inattention to duties placed upon the taxpayer by the Indiana code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.”

The taxpayer failed to remit use tax (primarily fixed assets) on 27.25%, 70.71%, and 40.30% of use tax due for calendar years 1998, 1999, and 2000 respectively. Taxpayer also failed to collect and remit sales tax on some of its taxable sales and did not assure that its clients had tax exemption certificates. Taxpayer has not provided reasonable cause to allow the department to waive the penalty.

FINDING

Taxpayer’s protest is denied.